

### **REMARKS**

Claims 11-23 have been withdrawn. Claims 1-10 remain in the application under examination. Applicant asserts that no new matter has been added. Reconsideration of the Application is hereby requested.

### **Claim Rejections**

#### ***Rejections Under 35 U.S.C. § 102***

Claims 1, 5, 6 and 10 were rejected under 35 U.S.C. § 102(e), as being anticipated by Virgin et al. (US 6,826,542).

Applicant respectfully traverses this rejection on the grounds that Virgin et al. does not qualify as a reference under 35 U.S.C. § 102(e). The present application was filed on February 13, 2002. However, it claims priority on PCT Patent Application No. PCT/US00/04817, filed on February 25, 2000, which further claims the benefit of U.S. Provisional Patent Application No. 60/122,136, which was filed on February 26, 1999. A claim for the benefit of priority of Provisional Patent Application No. 60/122,136 was made in the Declaration filed with the present application. Applicant asserts that the claims currently under examination are well supported by Provisional Application No. 60/122,136. Therefore, the effective filing date of the present application with respect to §102(e) references is February 26, 1999.

Virgin et al., on the other hand, appears to have been published on November 30, 2004 (its issue date) and was filed on November 22, 2000. Virgin claims priority on Provisional Application No. 60/167,103, filed on November 23, 1999.

Under 35 U.S.C. §102(e), the invention must be described in either:

- (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or
- (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, .... [35 U.S.C. § 102(e)]

Virgin et al. does not qualify under 35 U.S.C. § 102(e) because its earliest possible filing date was November 23, 1999 (assuming *arguendo* that the relevant portions of published patent were fully disclosed in the provisional application), whereas the present application (as evidenced by the filing of Provisional Application No. 60/122,136) has a date of invention of no later than February 26, 1999 – almost nine months *before* the earliest priority date of Virgin et al.! Therefore, Virgin cannot qualify as a 102(e) reference (or as a reference under any other paragraph in section 102).

Because Virgin et al. does not qualify as a § 102(e) reference, Applicant asserts that this rejection has been overcome and respectfully requests that it be withdrawn.

### ***Rejections Under 35 U.S.C. § 103***

Claims 2-4 were rejected under 35 U.S.C. § 103(a), as being unpatentable over Virgin et al. (US 6,826,542).

Applicant respectfully traverses this rejection on the grounds that Virgin et al. does not qualify as a reference under 35 U.S.C. § 102 (as discussed above with reference to the § 102 rejection) and, therefore, can not be used to support a § 103 rejection. Therefore, Applicant requests that this rejection be withdrawn.

Applicant also asserts that Virgin does not claim the same invention as claimed in the claims under examination in the present application.

### **Prior Art Made of Record**


In addition to the remarks presented above, Applicant asserts that the remaining prior art made of record neither anticipates, nor renders obvious the claimed invention.

### **CONCLUSION**

Applicant believes that the rejections have been overcome for the reasons recited above. Therefore, Applicant respectfully requests that all remaining claims be allowed and that a timely Notice of Allowance be issued.

No addition fees are believed due. However, the Commissioner is hereby authorized to charge any additional fees that may be required, including any necessary extensions of time, which are hereby requested, to Deposit Account No. 503535.

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Date

  
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